IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2295 OF 1994

Maharashtra Rajya Shetki Mahamandal
Karmachari Sanghatna .. Petitioner

versus

The M.D. Maharashtra State Farming
Corporation Ltd. and anr. .. Respondents

...

Mr.S.B. Deshmukh with Mr.A.V. Anturkar for the petitioner.

Mr.V.P. Sawant for the respondents

CORAM : B.H. MARLAPALLE,J

DATED : 23rd September 2005.

ORAL JUDGEMENT:-

1. This petition arises from the judgement and order dated 25th February 1994 passed by the

learned Member of the Industrial Court at Maharashtra at Pune dismissing complaint (ULP) No.128 of 1991. The said complaint was filed by the petitioner Sanghatna union on behalf of the employee of the respondent corporation and working in the head office at Pune. It was a complaint under item 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short 'the Act') and it was contended that the respondent employer failed to implement the G.R. dated 1st October 1988 and this failure amounted to an act of unfair labour practice within the meaning of item 99 of Schedule IV of the Act. As per the complaint, the employees at the head office of the respondent corporation are entitled for the pay scale and other monetary benefits as applicable to the State Government employees. A revision made in the pay scales pursuant to the 4th pay commission in the salaries payable to the government employees was not enforced in respect of the head office employees inspite of repeated reminders/ representations made by the union. It was pointed out that such recommendations and Bhole commission's report were made applicable to the

employees of the head office in the past and even salaries were refused as per the third pay commission. When the Board itself had accepted by way of specific resolution that the pay scales of the directly recruited employees of the corporation would be at par with the pay scales of the State Government employees, it was imperative for the respondent-Corporation to implement the 4th Pay Commission recommendations from 1st January, 1986 or from any other date on par with the State Government employees and failure to do so on the part of the respondents amounts to failure to implement the award/settlement and thus the act of the corporation amounts to unfair labour practice within the meaning of item no.9 of Schedule IV of the Act. The main prayer in the complaint reads thus :

> "To cease and resist from the aforesaid act of unfair labour practice by giving affirmative direction to the respondent to implement the G.R. dated 1st October, 1988 along with the other resolutions pertaining to D.A. and H.R.A"

2. The respondent filed the written statement and opposed the complaint contending that it did

not engage in any act of unfair labour practice as alleged. As per the respondent, the resolution passed by the State Government regarding the revision in pay scales, D.A. and other monetary allowances were not automatically applicable to its employees and such resolutions are required to be first placed before the board of directors of the Corporation who would pass a resolution for implementation of the revised pay scales subject to variations and thereafter it would approach the State Government for its approval. However, the corporation was running into losses for last about more than 20 years and the financial condition at the relevant time did not permit it to revise the pay scales in tune with the IV Pay Commission recommendations. Such an act would not come within the ambit of 'unfair labour practice' on the purported ground that the Corporation failed to implement the G.R. It was further denied that by way of customs and practice established over a long period that the Corporation was required to revise the pay scales as per the G.R. dated 1st October, 1988 on its own and thereafter approach the State Government for releasing funds.

3. The parties adduced oral and documentary evidence during the trial of the complaint and on assessment of the evidence of the respective parties, the learned Member of the Industrial Court has recorded a finding that there was no material to show that the G.Rs were per se binding on the corporation to revise the pay scales of the head office employees in tune with such resolutions. The Industrial Court concluded that there was no case of unfair labour practice made out against the respondents and failure to revise the pay scales as per the G.R. dated 1st October, 1988 did not amount to an act of unfair labour practice within item no.9 of Schedule IV of the Act.

4. Mr.Anturkar, the learned counsel for the petitioner union has taken me through the oral depositions of the witnesses from both the sides and the reasoning set out by the learned Member of the Industrial Court while dismissing the complaint. It was submitted by him that the Industrial Court committed manifest errors in law as well as on facts in dismissing the complaint. The evidence adduced by the complaint was sufficient to accept and hold that the G.Rs issued

from time to time for revision of pay scales and D.A etc. were automatically binding on the respondents and hence required to be implemented in consultation with the union. Failure to do so amounted to an act of unfair labour practice within item 9 of Schedule of the Act, urged the learned counsel.

5. The respondents corporation on the other hand has supported the impugned order and urged before this court that there was no case made out to cause interference with the said order. The corporation pointed out in detail its inability why it could not enforce the government decision for revision of pay scales, the D.A as well as house rent allowances. It was further contended that the implementation of IVth pay recommendations was entirely dependent upon the financial conditions of the corporation and decisions of the State Government about the accumulated losses and such heavy financial burden the state government refuses to sanction any additional amount or funds to it and unless the State Government released the additional funds the corporation on its own cannot be expected to implemented the G.R. for revision

of pay scales of its employees..

6. There is no doubt that the respondent corporation is not an entity of the State Government. It is a corporation which is managing thousands of acres of agricultural land surrendered to the State Government by the original landlords over and above the ceiling limits and therefore the revision in pay scales cannot be implemented by an order of the Court. The trial Court discussed the same and the reasons set out in support of the finding are based on the evidence adduced by the parties. Both the parties examined one witness each. The witness of the complaint in his deposition before the Industrial Court sated "whenever we met and requested the management then as per the traditions discussions used to take place and consequent to such a discussion Bhole Commission and Badkar Commission were made applicable to the Corporation employees." The Industrial Court further noted that the witness of the complainant agreed that the revision of pay scales etc. were made applicable by the respondents corporation to its employees after having discussions with the union and to have

passed a resolution thereafter and on obtaining the State Government's approval to such a resolution. The witness of the corporation has stated before the Industrial Court that the service conditions applicable to the employees of the State Government did not apply to the respondent corporation per se. It was stated by the said witness that when ever revision in pay scales was granted to the employees of the corporation the same was not given to the extent which was made applicable to the State Government employees. Any increase given in the salary was as a result of bilateral discussions between the union and the management. The letter dated 16th June 1989 (Exhibit C-28) was written by the President of the complainant union to the Chief Minister of Maharashtra and it is pointed out that by the union's own contentions, no revision in pay scales could be undertaken by the corporation unless it was approved by the State Government in advance.

7. The Government of Maharashtra on its decision to revise the pay scales of the State Government employees pursuant to the IVth pay commission's recommendations issued a notification

on 1st October, 1988 in the name and by the orders of the Governor under Article 3099 of the constitution for amending the Maharashtra Civil Services (Pay Scales) Rules, 1984. By the said notification the Maharashtra Civil Services (revised pay scales) Rules, 1988 were brought into force and salaries of the State Government employees came to be revised. A perusal of the said notification clearly states that it was an amendment to the Civil Services Rules (Pay Scales) Rules, 1981 and the said revision was not applicable to the employees of the State Government undertakings/corporation who are autonomous bodies and distinct legal entities. A notification issued under Article 309 of the Constitution of India cannot revise the pay scales and other benefits of the employees of the state government undertakings/corporation unless it states so specifically and/or it has been extended to such employees. It cannot be made applicable to autonomous bodies automatically and therefore, there cannot be any failure attributable to the respondents in the implementation of such a resolution for revision in pay scales. The notification also does not state that it applies to

the employees of the State Government undertakings/corporations. It is thus clear that the corporation cannot be held guilty of failure to implement the notification dated 1st October, 1988 and therefore it cannot be held guilty to have engaged in unfair labour practice within the meaning of item 999 of Schedule IV of the Act. The reasons set out by the Industrial Court in support of its conclusions dismissing the complaint cannot be termed as perverse or grossly erroneous so as to interfere in exercise of powers of superintendence under Article 227 of the Constitution of India.

8. Mr.Anturkar, the learned counsel for the petitioner union has placed on record some subsequent decisions purportedly taken by the respondent corporation and more particularly during the pendency of this petition. He submitted that the Government of Maharashtra had appointed a separate committee to submit a report regarding the working of the respondent corporation and the said committee in its recommendations has suggested to revise the pay scales of the employees of the corporation on par with the employees of the State Government. It was also pointed out that these

recommendations have been accepted by the cabined committee headed by the Hon’ble Chief Minister and thus the corporation is bound to refuse the salaries to its employees to its employees on par with the salaries of the state government employees.

9. Mr.Sawant, learned counsel for the respondent corporation has referred to the concerned government resolution and also the resolution passed by the respondent corporation so as to point out that the IVth pay commission recommendations have been implemented from 1st January 2001 and for the earlier period from 1st January 1986 to 31st December, 2000 there is notional revision of pay scales. Obviously, this revision is applicable to all the employees in the head office. Mr.Sawant also pointed out that due to the paucity of funds, the arrears of pay on account of this revision could not be cleared and the present financial condition of the corporation is so precarious that it is not able to disburse the salaries of the employees, from June. The corporation has approached the State Government for financial assistance so as to disburse the salary

to its employees form June to August, 2005. The learned Counsel further submitted that if the State government approves the proposal to extend the revision of pay scales for any period upto January 2001 and releases funds for the same, the corporation has no objection to grant actual benefits of revision later rather than notional benefits.

9. Be that as it may, so far as the present petition is concerned, there is no case made out to cause interference in the view taken by the Industrial Court in dismissing the complaint (ULP) No.128 of 1991 under the supervisory jurisdiction under Article 227 of the Constitution, and therefore challenge to the said decision is devoid of merits. Hence this petition fails and the same is hereby dismissed. The amount deposited with the Registry of this Court is allowed to be withdrawn with interest accrued if any on the condition that the said amount shall be utilised for payment of arrears of salary.

B.H. MARLAPALLE, J